

**DISTRICT OF COLUMBIA  
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA  
DEPARTMENT OF MENTAL HEALTH  
Petitioner,

v.

ANGEL SQUARE, INC. and JOYCE  
OLAYINKA  
Respondent

Case No.: I-02-90001

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**FINAL ORDER**

**I. Introduction**

On May 6, 2002, the Government served a Notice of Infraction upon Respondents Angel Square, Inc., (“Angel Square”) and Joyce Olayinka alleging that they violated 22 DCMR 3835.5, which requires a supported residence to maintain at least one staff person at the residence whenever a resident is present.<sup>1</sup> The Notice of Infraction alleged that Respondents violated § 3835.5 on three separate occasions, once on April 12, 2002 and twice on April 16, 2002. It charged that the violations occurred at 1253 Morse Street, N.E., and sought a fine of \$500 for each violation.

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<sup>1</sup> The Notice of Infraction names both Angel Square and Ms. Olayinka. By failing to check an appropriate box on the form, the Government has indicated its intent to charge both of them as Respondents.

Respondents answered the Notice of Infraction with a timely plea of Admit with Explanation to one charge and pleas of Deny to the two other charges.<sup>2</sup> A hearing date was set for July 12, 2002 for the charges to which the Respondents pleaded Deny.

At the July 12<sup>th</sup> hearing, Leslie deVeau, the charging inspector, appeared on behalf of the Government. Respondent Joyce Olayinka, the owner of Angel Square and residence director for the facility at issue, appeared *pro se* and on behalf of Angel Square.

Based upon the testimony at the hearing, my evaluation of the credibility of the witnesses and the documents admitted into evidence, I now make the following findings of fact and conclusions of law.

## **II. Findings of Fact**

Respondent Angel Square operates a supported residence for mentally ill persons at 1253 Morse Street, N.E.<sup>3</sup> Respondent Joyce Olayinka is the residence director of the facility.

### **A. The Morning Incident on April 16**

Respondents' plea of Admit with Explanation establishes that, at approximately 9:30 a.m. on April 16, 2002, no staff member was present at the residence while a resident was there. At approximately 9:30 a.m., Ms. deVeau visited the facility to follow up on a previous complaint

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<sup>2</sup> On Respondents' answer, a plea of Admit with Explanation was checked for the April 12 charge, and a plea of Deny was checked for both April 16 charges. At the hearing, however, Respondents stated that they intended to plead Admit with Explanation to the first infraction alleged on April 16 and Deny to the other two charges. Without objection from the Government, Respondents' pleas were amended as they requested.

<sup>3</sup> 22 DCMR 3835.1 describes a supported residence as "a homelike setting where residential care is provided for eight (8) or fewer individuals who require twenty-four (24 hr.) staff supervision and assistance." Respondents do not dispute that the facility at issue is a supported residence.

about residents being left alone. No staff members were present at the facility when she arrived, but one resident, who will be referred to as “Resident #1” to protect his privacy, was there.

Resident #1 usually attends a day program and is picked up in the morning by a shuttle bus, which stops directly outside the facility. The other residents of the facility attend different day programs with different transportation arrangements. On the morning of April 16, Resident # 1 left the house when the shuttle bus came, but did not board it. Instead, he returned to the house and went to his room. After the other residents left for their day programs, the staff member on duty checked to make sure that no one was in the house. The staff member did not see him when she made her check and then left the house. Ms. Olayinka later learned that Resident #1 hid behind the door to his room when the staff member made her check.

At some point after Ms. deVeau’s arrival at the facility, Resident #1’s case manager from Community Connections Carepoint (“Carepoint”) arrived on the scene and took Resident #1 with him in order to provide proper supervision.

#### **B. The Afternoon Incident on April 16**

Ms. deVeau returned to the residence at about 2:30 p.m. No staff members were present upon her arrival. All of the residents were standing outside and were locked out of the home. A staff member returned to the facility about 10 minutes after Ms. deVeau’s arrival. Ms. Olayinka claimed that the residents and the staff member were returning from a walk when Ms. deVeau arrived, with the staff member just down the block. I do not credit that testimony. Unlike Ms. Olayinka, Ms. deVeau was present at the time in question, and testified credibly that the staff member did not arrive for 10 minutes, an interval inconsistent with her supervising the residents

as they returned from a walk. I find, therefore, that residents were present at the facility on the afternoon of April 16 without a staff member present to provide supervision.

### **C. The Incident on April 12**

When Ms. deVeau spoke separately to the residents on the afternoon of April 16, they told her that they also had been locked out on the previous Friday afternoon (April 12). Ms. deVeau later spoke with Miranda Powell, a case manager for Carepoint, who told her that she went to the facility on April 12 and found all of the residents outside with no staff members present at the facility. While it would have been preferable for the Government to have called Ms. Powell or someone else with first hand knowledge of the events of April 12 as a witness, instead of relying solely upon hearsay, I find in this case that the hearsay is sufficiently credible.<sup>4</sup> I find, therefore, that the residents were locked out of the facility on April 12 without any staff member present to supervise them.

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<sup>4</sup> It is well settled that hearsay is admissible in administrative hearings and that, in appropriate circumstances, hearsay by itself can serve as substantial evidence supporting a finding of fact. *Hutchinson v. District of Columbia Office of Employee Appeals*, 710 A.2d 227, 232-33 (D.C. 1998). In this case, the consistency of the statements by Ms. Powell and the residents concerning the events of April 12, the absence of any record evidence of bias by the declarants, and the absence of any contradictory evidence are all factors persuading me that the hearsay introduced by the Government is reliable, even though the hearsay was unsworn and one or more of the declarants are available to testify. *See id.* at 33: “ ‘Among the factors to consider in evaluating the reliability of hearsay evidence are whether the declarant is biased, whether the testimony is corroborated, whether the hearsay statement is contradicted by direct testimony, whether the declarant is available to testify and be cross-examined, and whether the hearsay statements were signed and sworn.’ ” (quoting *Wisconsin Avenue Nursing Home v. District of Columbia Comm’n on Human Rights*, 527 A.2d 282, 288 (D.C. 1987))

### **III. Conclusions of Law**

#### **A. Section 3835.5**

The rule at issue provides:

Each Supported Residence shall maintain at least one (1) staff person at the residence, whenever a resident is present and a 1:8 staff-to-resident ratio during times of peak activity, such as mealtimes.

22 DCMR 3835.5.

Thus, Angel Square, a supported residence, must have a staff person present whenever one or more residents are present at the Morse Street facility. Violation of § 3835.5 is a Class 2 infraction, which is punishable by a fine of \$500 for a first offense. 16 DMCR 3241.2(t) and 16 DCMR 3201.

Respondents' plea of Admit with Explanation establishes that they violated § 3835.5 on the morning of April 16, 2002. Respondents' claim that Resident #1 was hiding in his room when the staff members left the facility does not warrant a suspension or reduction of the fine. The violation occurred because the facility's staff missed at least three opportunities to notice that Resident #1 did not go to his day program. The staff failed to notice that he did not get on the shuttle bus, failed to notice that he had returned to the residence, and failed to notice that he was hiding behind the door of his room. The very purpose of a supported residence is to provide 24-hour "staff supervision and assistance" to the residents. 22 DCMR 3835.1. Suspension or reduction of the fine for the morning incident on April 16 would be an unjustified benefit to a facility that did not provide sufficient supervision to a resident who needed it. Accordingly, I will impose the full \$500 fine for the violation on the morning of April 16.

With respect to the incidents occurring on the afternoons of April 12 and April 16, the evidence establishes that residents were present at the facility without at least one staff person in

attendance in violation of § 3835.5. Accordingly, I will impose a fine of \$500 for each of these violations.

## **B. Liability of Ms. Olayinka**

The Notice of Infraction names both Ms. Olayinka and Angel Square as Respondents. The only evidence concerning Ms. Olayinka is that she is the residence director of the facility. There is no evidence that Ms. Olayinka was personally involved in any of the incidents at issue in this case or that she herself was on duty at the time and failed to be present in the facility. While a company may be held liable for civil infractions committed by its employees, 16 DCMR 3201.4, there is no authority for holding that a company's officers, simply by virtue of their position, are generally liable for violations committed by the company's employees.<sup>5</sup> Thus, in order to hold Ms. Olayinka liable, there must be evidence of her actual involvement in the violations charged. *DOH v. D.C. Family Services*, OAH No. I00-40138 at 6-7 (Final Order, October 22, 2001); *DOH v. DRM & Associates* OAH No. I-00-40309 at 13 (Final Order, January 23, 2002). Compare *DOH v. Linde*, OAH No. I00-10004 at 5-6 (Final Order, August 6, 2001) (managing agent liable because of his personal involvement in the violations). See also *Browning-Ferris Industries v. Ter Maat*, 195 F.3d 953, 955-56 (7<sup>th</sup> Cir. 1999) (corporate officers who are not personally involved in corporation's unlawful acts are not liable for those acts).

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<sup>5</sup> To be sure, some regulations (not at issue in this case) impose liability upon specific individuals when certain violations occur. See, e.g., 22 DCMR 3523.1 (Residence director of a group home for mentally retarded persons must ensure that residents' rights are protected); *DOH v. Ferguson*, OAH No. I-00-40305 at 3-5 (Final Order, August 31, 2001) (29 DCMR 320.3 holds the caregiver in a child development home liable for regulatory violations occurring there). Although a separate rule requires a residence director to ensure that a supported residence is properly supervised during his or her absence, 22 DCMR 3818.5, the Government did not charge Ms. Olayinka with violating that rule.

Ms. Olayinka's plea of Admit with Explanation is sufficient to establish that she violated § 3835.5 on the morning of April 16. The record demonstrates, however, that there would not be a legal or factual basis for finding her liable for that violation absent her plea. Therefore, I will not impose any fine upon her for the first violation on April 16. D.C. Official Code § 2-1801.03(b)(6). See, e.g., *DOH v. Clark*, OAH No. I-00- 20248 at 6 (Final Order, June 11, 2002); *DOH v. Mallios*, OAH No. I-00-20397 at 5 (Final Order, May 31, 2002); *DOH v. Multi Therapeutic Services, Inc.*, OAH No. I00-40121 at 10-11 (Final Order, November 29, 2001). Ms. Olayinka pleaded Deny to the other charges alleged in the Notice of Infraction and, as noted above, the evidence does not establish that she is liable. Accordingly, she is not individually liable for any fines. Angel Square, however, must pay the fines for all three violations.

#### **IV. Order**

Based upon the foregoing findings of fact and conclusions of law, it is, this \_\_\_\_\_ day of \_\_\_\_\_, 2002:

**ORDERED**, that Respondent, Angel Square, Inc., shall pay a total of **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500)** in accordance with the attached instructions within twenty (20) calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

**ORDERED**, that if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1 ½ % per month or portion thereof, starting from the date of this Order, pursuant to D.C. Code Official Code § 2-1802.03 (i)(1); and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

**FILED**      **08/02/02**

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John P. Dean  
Administrative Judge